



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat, and Water Quality"

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30 May 2008

Ms. Barbara McDonnell
Chief, Division of Environmental Services
Department of Water Resources
delores@water.ca.gov

Via: Electronic Submission
Hardcopy if Requested

RE: Scoping Comments for the EIR/EIS for the Sacramento-San Joaquin Bay Delta Conservation Plan

Dear Ms. McDonnell;

The California Sportfishing Protection Alliance (CSPA) appreciates the opportunity to provide scoping comment on the proposed EIR/EIS for the Sacramento-San Joaquin Bay Delta Conservation Plan (BDCP).

Generally speaking: the proposed Habitat Conservation Plan is the most ambitious and far-reaching Habitat Conversation Plan (HCP) ever envisioned coupled with a massive scheme to change the hydrology of the Central Valley. The proposed time schedule is absurdly truncated. No significantly scaled HCP has ever been completed within the proposed timeframe, let alone one coupled with a proposed massive hydrologic modification of an estuary. CSPA believes this scheme is not only internally inconsistent but also fundamentally inconsistent with the Governor's Delta Vision Plan, basic federal clean water and endangered species laws and common sense.

- a. There is a fundamental inconsistency between an HCP with a goal of protecting and restoring listed species and a conveyance plan involving a massive public works project that will change the hydrology of the estuary and tributary waterways. Indeed, the plan is little more than a Bay-Delta Conveyance Plan masquerading as an HCP.
- b. As a general principle, CSPA does not believe that any HCP should include guaranteed water delivery and/or changes in infrastructure as solutions. An HCP should focus on needed habitat improvement sufficient to enhance listed species to a point where they can be removed from endangered species lists.
- c. We note that consideration of increased or guaranteed water delivery or new diversions of fresh water from the delta that would result in increased degradation of water quality are impermissible under the federal Clean Water Act. Economic considerations have been found by the courts to be illegal pursuant to Section 10 of the federal Endangered Species Act.

- d. Long-term assurances or guarantees are fundamentally inconsistent with any defensible adaptive management program. One of the reasons the recent federal BioOp was overruled was that scientific staff decisions and science-based recommendations were routinely ignored or overridden by the Water Operations Management Team (WOMT).
- e. The envisioned HCP is fundamentally inconsistent with the governor's Delta Vision statement. For example, Principle No. 7 states that a revitalized Delta ecosystem will require reduced diversions or changes in patterns and timing of diversions and exports.
- f. We note that the California Department of Water Resources, in Bulletin No. 76, estimated that, while full demands on the State Water Project system could be met with surplus water until 1981, any future increases would have to be met through additional diversions of water from the Eel, Trinity, Mad-Van Duzen and Klamath Rivers. However, those anticipated diversion projects have never implemented and the increased level of exports has deprived the estuary of water crucial to the continued existence of pelagic and salmonid species.
- g. We also note that Congress specified that construction of the San Luis Unit of the Central Valley Project not proceed until satisfactory provision was made for adequate drainage from selenium-impaired acreage in the San Luis Unit. Many decades later, satisfactory drainage has still not been provided and, as a result, the San Joaquin River is legally defined, under the federal Clean Water Act, as impaired because of selenium and boron.

Specifically: at a minimum, the EIR/EIS must:

- a. Incorporate a comprehensive ecological analysis. No HCP plan should have goals beyond protecting and enhancing targeted species. The plan must protect the Delta and tributary waters "no matter what," regardless of costs or consequences.
- b. Identify the area and species the HCP is attempting to cover and evaluate the impacts of meeting existing and proposed water demand to each species covered by the HCP.
- c. Identify and evaluate alternative water supplies and delivery systems and prioritize those evaluations on a) ecosystem water needs, b) urban water needs and c) agricultural water needs. Clearly, an HCP's first priority must be on ecosystem needs followed by urban and agricultural needs.
- d. Analyze and quantify the Delta needs. For over a decade, DWR/Bureau and he Bureau have refused to undertake a quantification of how much water the

ecosystem actually requires. Clearly, the 4.05 and 3.5 maf that DWR exported in 05 and 06 are excessive. Significant reductions are essential. The EIR/EIS must discuss how much water is required for a healthy Delta and how various scenarios of export levels and patterns and timing of upstream diversions will affect targeted species. It must discuss and analyze the impacts to biological resources caused by the documented shortfall of water deliveries that were anticipated from North-coast Rivers. We reiterate; an EIR/EIS that fails to evaluate several reduced export alternatives will fail to comply with minimum CEQA/NEPA requirements.

- e. Explain how levy improvements, flood plain management and changes in water circulation and water quality will affect each of the targeted species and proposed structural modifications.
- f. Provide a detailed analysis of how expansion of wetland habitat and changes in hydrology will affect mercury methylation and the bioavailability and/or bioconcentration of mercury, selenium and other toxic pollutants to the food web.

The transfer of relatively good quality Sacramento River water around or through the Delta via an isolated or dual facility will inevitably reduce assimilative capacity throughout the Delta and increase residence time of water in the eastern Delta. The DWR/Bureau have failed to analyze and evaluate these changes in assimilative capacity and residence time on the full suite of chemicals and chemical processes and the potential adverse effects on numerous species in numerous previous environmental documents. They must not fail to do so in this critical EIR/EIS. We note that a conservative constituent like salt cannot be used as a surrogate to evaluate volatile, highly toxic or bioaccumulative pollutants or impacts on dissolved oxygen.

- g. Describe in detail how the reductions in Delta exports identified in the Delta Vision document will be accomplished within the California water rights process and the effects on a) senior water rights holders, b) junior holders, c) riparian diverters and d) the public trust.
- h. Propose full mitigation for “take” of species protected pursuant to the California Endangered Species Act. We note that California State Water Board Decision 1485 found that “full mitigation of project impacts on all fishery species now would require the virtual shutting down of the project export pump.” The project must not be viewed simply as a “rabbit hole” enabling exporters to escape existing, but long ignored, obligations under current endangered species laws.
- i. Reveal, analyze and discuss how the new facilities and changes in points of diversion for conveyance and storage are likely to affect all of the species and

habitat the HCP is supposed to protect; i.e., how will the changes in hydrology and diversion affect listed species.

- j. Establish and evaluate recovery goals, yardsticks, mileposts and consequences of failure within the HCP/NCCP that will assure policy makers and the general public that progress is occurring and species recovery is on track.
- k. Explain how the HCP will protect species from increased temperatures, salinity and sea level rises caused by global warming over the existence of the BDCP spanning the next fifty years.

The enormous and unprecedented scope of the proposed scheme will require the most ambitious and detailed environmental document ever assembled.

Thank you for considering these comments. We request a receipt of timely submission and that we be placed on the list to receive both electronic and hard copies the draft EIR/EIS. If you have questions or require clarification, please don't hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is fluid and cursive, with the first name "Bill" and last name "Jennings" clearly distinguishable.

Bill Jennings, Executive Director
California Sportfishing Protection Alliance